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12   UNITED STATES DISTRICT COURT

13   NORTHERN DISTRICT OF CALIFORNIA

14   SAN FRANCISCO DIVISION

15
   UNITED STATES OF AMERICA,   ) CASE NO. 3:17-CR-103 VC
16   )
                 Plaintiff,   )
17   ) DECLARATION OF ASSISTANT UNITED
         v.   ) STATES ATTORNEY JEFFREY SHIH
18   )
   KARIM BARATOV,   )
19   )
                 Defendant.   )
20 _____)

21

22   I, Jeffrey Shih, hereby declare as follows:

23   1.   Through the Plea Agreement in this case, Defendant Karim Baratov agreed that the

24 Sentencing Guidelines calculation for Count One should include:

25   a.   the application of the Chapter 2 Offense Guideline in USSG § 2B1.1;

26   b.   the 2-level specific offense characteristic for sophisticated means in USSG
                    § 2B1.1(b)(10); and
27
               c.   the 2-level specific offense characteristic for committing an offense under 18 U.S.C.
28   § 1030 to obtain personal information in USSG § 2B1.1(b)(17).

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2.   For the 2006 through 2016 Federal Sentencing Guidelines Manuals:

      a.   the Chapter 2 Offense Guideline in USSG § 2B1.1 corresponds to the Count One offense in each of the manuals;

      b.   the 2-level specific offense characteristic for sophisticated means appears

          i.   in USSG § 2B1.1(b)(10) for the 2011 through 2016 manuals, and

          ii.   in USSG § 2B1.1(b)(9) for the 2006 through 2010 manuals; and

      c.   the 2-level specific offense characteristic for committing an offense under 18 U.S.C. § 1030 to obtain personal information appears

          i.   in USSG § 2B1.1(b)(17) for the 2013 through 2016 manuals,

          ii.   in USSG § 2B1.1(b)(16) for the 2011 and 2012 manuals,

          iii.   in USSG § 2B1.1(b)(15) for the 2008 through 2010 manuals, and

          iv.   in USSG § 2B1.1(b)(14) for the 2006 and 2007 manuals.

3.   On May 1, 2018, I attempted to access the United States Sentencing Commission datafiles for sentences imposed on individuals between fiscal years 2007 and 2017, which are available at https://www.ussc.gov/research/datafiles/commission-datafiles. Those datafiles are in SAS and SPSS file formats, which according to correspondence with the Office of Research and Data for the United States Sentencing Commission require the purchase and use of advanced statistical analysis programs.

4.   The United States Sentencing Commission states on its datafiles website that its "datafiles may also be accessed through the University of Michigan's Inter-University Consortium for Political and Social Research (ICPSR)." On May 1, 2018, I accessed the United States Sentencing Commission data through the ICPSR website, *available at* https://www.icpsr.umich.edu/icpsrweb/. Through the ICPSR website, I searched for United States Sentencing Commission data and found it in the series "Monitoring of Federal Criminal Sentences Series," *available at* https://www.icpsr.umich.edu/icpsrweb/ICPSR/series/83. That ICPSR series had datafiles available through 2015, and I downloaded the main data files that were available in tab-delimited format, which I could open and filter using Microsoft Excel, for 2007, 2008, 2009, 2010, 2011, 2014, and 2015. The ICPSR website did not appear to have the main data files for 2012 and 2013 in tab-delimited format.

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5.   Using the Codebooks that accompanied each of the main datafiles that I downloaded from the ICPSR website,[1] I filtered the data in an effort to identify the sentences that, as Defendant Baratov agreed to in his Plea Agreement, applied USSG § 2B1.1 as the primary Chapter 2 offense guideline, the 2-level specific offense characteristic for sophisticated means, and the 2-level specific offense characteristic for committing an offense under 18 U.S.C. § 1030 to obtain personal information. Specifically, I filtered the datafiles using the following variables:

Variable AMENDYR[2] =	Variable GDLINEHI[3] =	2-level specific offense characteristic for sophisticated means	2-level specific offense characteristic for committing 18 U.S.C. § 1030 offense to obtain personal information	Variable SOURCES[4] =
2006	2B1.1	Variable ADJ_JHI[5] = 2	Variable ADJ_OHI[6] = 2	1
2007	2B1.1	Variable ADJ_JHI = 2	Variable ADJ_OHI = 2	1
2008	2B1.1	Variable ADJ_JHI = 2	Variable ADJ_PHI[7] = 2	1
2009	2B1.1	Variable ADJ_JHI = 2	Variable ADJ_PHI = 2	1
2010	2B1.1	Variable ADJ_JHI = 2	Variable ADJ_PHI = 2	1
2011	2B1.1	Variable ADJ_KHI[8] = 2	Variable ADJ_QHI[9] = 2	1

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[1]   These ICPSR Codebooks appear to use the same codes described in the Variable Codebook for Individual Offenders by the United States Sentencing Commission, *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/datafiles/USSC_Public_Release_Codebook_FY99_FY17.pdf (*last visited* May 1, 2018).

[2]   This variable indicates the guideline amendment year used to calculate the guideline calculations of a particular sentence.

[3]   This variable indicates the Chapter 2 offense that generated the highest guideline computation (*i.e.*, the primary Chapter 2 offense guideline) of a particular sentence.

[4]   This variable indicates the extent to which information coded in detailed guideline application is based upon known court findings. A SOURCES value of 1 indicates that the information represents known court findings (as opposed to alternate documents).

[5]   This variable indicates the value applied for the 9th special offense characteristic adjustment. Thus, for cases applying USSG § 2B1.1, the variable ADJ_JHI indicates the value of § 2B1.1(b)(9).

[6]   This variable indicates the value applied for the 14th special offense characteristic adjustment. Thus, for cases applying USSG § 2B1.1, the variable ADJ_OHI indicates the value of § 2B1.1(b)(14).

[7]   This variable indicates the value applied for the 15th special offense characteristic adjustment. Thus, for cases applying USSG § 2B1.1, the variable ADJ_PHI indicates the value of § 2B1.1(b)(15).

[8]   This variable indicates the value applied for the 10th special offense characteristic adjustment. Thus, for cases applying USSG § 2B1.1, the variable ADJ_KHI indicates the value of § 2B1.1(b)(10).

[9]   This variable indicates the value applied for the 16th special offense characteristic adjustment. Thus, for cases applying USSG § 2B1.1, the variable ADJ_QHI indicates the value of

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Variable AMENDYR[2] =	Variable GDLINEHI[3] =	2-level specific offense characteristic for sophisticated means	2-level specific offense characteristic for committing 18 U.S.C. § 1030 offense to obtain personal information	Variable SOURCES[4] =
2012	2B1.1	Variable ADJ_KHI = 2	Variable ADJ_QHI = 2	1
2013	2B1.1	Variable ADJ_KHI = 2	Variable ADJ_RHI[10] = 2	1
2014	2B1.1	Variable ADJ_KHI = 2	Variable ADJ_RHI = 2	1

6.   For the 2007 datafile, using the variables described in Paragraph 5 above resulted in zero cases.

7.   For the 2008 datafile, using the variables described in Paragraph 5 above resulted in one case, which is summarized in the table below:

Year of Sentence, SENTYR	Loss Increase, 2B1.1(b)(2), ADJ_BHI	Final Offense Level, XFOLSOR	Final Criminal History Category, XCRHISSR	USSG Range Min., XMINSOR	USSG Range Max., XMAXSOR	Statutory Min., STATMIN	Statutory Max., STATMAX	Prison Sentence, SENTTOT0	Sentence Relative to USSG Range, BOOKER2
2008	+8	23	1	46	57	24	84	72	Within

8.   For the 2009 datafile, using the variables described in Paragraph 5 above resulted in three cases, which are summarized in the table below:

Year of Sentence, SENTYR	Loss Increase, 2B1.1(b)(2), ADJ_BHI	Final Offense Level, XFOLSOR	Final Criminal History Category, XCRHISSR	USSG Range Min., XMINSOR	USSG Range Max., XMAXSOR	Statutory Min., STATMIN	Statutory Max., STATMAX	Prison Sentence, SENTTOT0	Sentence Relative to USSG Range, BOOKER2
2009	+4	19	4	46	57	0	720	48	Within
2009	+8	15	1	18	24	0	60	0[11]	Gov't-sponsored[12]
2009	+6	15	1	18	24	24	444	42	Within

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§ 2B1.1(b)(16).

[10]   This variable indicates the value applied for the 17th special offense characteristic adjustment. Thus, for cases applying USSG § 2B1.1, the variable ADJ_RHI indicates the value of § 2B1.1(b)(17).

[11]   The variable ALTMO indicates that the sentence in this case included 12 months of alternative incarceration.

[12]   Based on the accompanying variable codebook, the government sponsored code includes 5K1.1/substantial assistance, early disposition/5K3.1, and government sponsored - below range.

9.   For the 2010 datafile, using the variables described in Paragraph 5 above resulted in two cases, which are summarized in the table below:

Year of Sentence, SENTYR	Loss Increase, 2B1.1(b)(2), ADJ_BHI	Final Offense Level, XFOLSOR	Final Criminal History Category, XCRHISSR	USSG Range Min., XMINSOR	USSG Range Max., XMAXSOR	Statutory Min., STATMIN	Statutory Max., STATMAX	Prison Sentence, SENTTOT0	Sentence Relative to USSG Range, BOOKER2
2010	+22	43	6	Life	Life	48	3708	3708	Within
2010	+18	26	1	63	78	0	600	51	Below

10.   For the 2011 datafile, using the variables described in Paragraph 5 above resulted in four cases, which are summarized in the table:

Year of Sentence, SENTYR	Loss Increase, 2B1.1(b)(2), ADJ_BHI	Final Offense Level, XFOLSOR	Final Criminal History Category, XCRHISSR	USSG Range Min., XMINSOR	USSG Range Max., XMAXSOR	Statutory Min., STATMIN	Statutory Max., STATMAX	Prison Sentence, SENTTOT0	Sentence Relative to USSG Range, BOOKER2
2010	0	22	1	41	51	24	144	132	Above
2011	+6	14	3	21	27	24	324	45	Within
2011	0	12	1	10	16	0	60	0.03[13]	Above
2011	+8	21	1	37	46	0	120	72	Above

11.   For the 2014 datafile, using the variables described in Paragraph 5 above resulted in eight cases, which are summarized in the table:

Year of Sentence, SENTYR	Loss Increase, 2B1.1(b)(2), ADJ_BHI	Final Offense Level, XFOLSOR	Final Criminal History Category, XCRHISSR	USSG Range Min., XMINSOR	USSG Range Max., XMAXSOR	Statutory Min., STATMIN	Statutory Max., STATMAX	Prison Sentence, SENTTOT0	Sentence Relative to USSG Range, BOOKER2
2013	+16	31	4	151	188	0	120	120	Within
2013	0	13	1	12	18	24	84	60	Above
2013	+22	43	1	Life	Life	0	300	72	Gov't-sponsored
2013	+22	43	1	Life	Life	0	300	12.03[14]	Gov't-sponsored
2014	+8	17	1	24	30	0	120	0	Gov't-sponsored

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[13]   The variable ALTMO indicates that the sentence in this case included 18 months of alternative incarceration.

[14]   The variable ALTMO indicates that the sentence in this case included 6 months of alternative incarceration.

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Year of Sentence, SENTYR	Loss Increase, 2B1.1(b)(2), ADJ_BHI	Final Offense Level, XFOLSOR	Final Criminal History Category, XCRHISSR	USSG Range Min., XMINSOR	USSG Range Max., XMAXSOR	Statutory Min., STATMIN	Statutory Max., STATMAX	Prison Sentence, SENTTOT0	Sentence Relative to USSG Range, BOOKER2
2014	+4	12	4	21	27	0	60	15	Gov't-sponsored
2014	+12	19	1	30	37	0	60	0[15]	Below
2014	+4	13	1	12	18	0	60	18	Within

12.   For the 2015 datafile, using the variables described in Paragraph 5 above resulted in five cases, which are summarized in the table:

Year of Sentence, SENTYR	Loss Increase, 2B1.1(b)(2), ADJ_BHI	Final Offense Level, XFOLSOR	Final Criminal History Category, XCRHISSR	USSG Range Min., XMINSOR	USSG Range Max., XMAXSOR	Statutory Min., STATMIN	Statutory Max., STATMAX	Prison Sentence, SENTTOT0	Sentence Relative to USSG Range, BOOKER2
2014	0	18	1	27	33	0	120	9	Gov't-sponsored
2014	+20	31	4	151	188	0	120	48	Gov't-sponsored
2015	+16	26	4	92	115	0	300	72	Below
2015	+24	40	1	292	365	0	780	156	Gov't-sponsored
2015	+12	31	1	108	135	0	120	54	Gov't-sponsored

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Executed on May 8, 2018.

_/s/ Jeffrey Shih_____
JEFFREY SHIH
Assistant United States Attorney

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[15]   The variable ALTMO indicates that the sentence in this case included 6 months of alternative incarceration.

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